

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

JEREMY L. REED,)
Plaintiff,)
v.) No. 1:16-CV-190 AGF
UNITED STATES OF AMERICA,)
Defendant,)

MEMORANDUM AND ORDER

This matter is before the Court on movant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.¹ Movant requests sentencing relief under *Johnson v. United States*, 135 S.Ct. 2551 (2015). The motion is denied.

In *Johnson*, the Court held the “residual clause” of the Armed Career Criminal Act (“the ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), to be unconstitutionally vague. The ACCA enhances the punishment for firearms offenses under 18 U.S.C. § 922(g) when the defendant has at least three prior convictions for a serious drug offense or a “violent felony.” The term “violent felony” is defined in the ACCA as felony offense that “(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (ii) is burglary, arson, or extortion, involves the use of explosives, or *otherwise involves conduct that presents a serious potential risk of physical injury to another.*” 18 U.S.C. § 924(e)(B) (emphasis added). The “otherwise involves” language

¹ Movant filed a letter with the Court requesting assistance of counsel to determine whether he is entitled to sentencing relief. The Court found the interests of justice required that it be interpreted as a motion to vacate under § 2255.

of the ACCA is the residual clause that the Supreme Court found unconstitutional. *Johnson*, 135 S.Ct. at 2563.

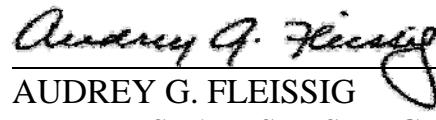
In this case, movant pled guilty to one count of felon in possession of a firearm, and the Court sentenced him to ninety months' imprisonment. Movant's sentence was not enhanced under the ACCA because he did not have three qualifying violent felony convictions. As a result, *Johnson* has no application to movant's sentence, and the motion must be denied.

Finally, movant has failed to make a substantial showing of the denial of a constitutional right, which requires a demonstration "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." *Khaimov v. Crist*, 297 F.3d 783, 785 (8th Cir. 2002) (quotation omitted). Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that the motion to vacate is **DENIED**, and this action is **DISMISSED** with prejudice.

Dated this 15th day of July, 2016.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE